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Convention on the Rights of Persons with Disabilities

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Article 12: Equal recognition before the law

I. Introduction

1. Equality before the law is a basic general principle of human rights protection and is indispensable for the exercise of other human rights. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights specifically guarantee the right to equality before the law. Article 12 of the Convention on the Rights of Persons with Disabilities further describes the content of this civil right and focuses on the areas in which people with disabilities have traditionally been denied the right. Article 12 does not set out additional rights for people with disabilities; it simply describes the specific elements that States parties are required to take into account to ensure the right to equality before the law for people with disabilities, on an equal basis with others.

2. Given the importance of this article, the Committee facilitated interactive forums for discussions on legal capacity. From the very useful exchange on the provisions of article 12 by experts, States parties, disabled persons' organizations, non-governmental organizations, treaty monitoring bodies, national human rights institutions and United Nations agencies, the Committee found it imperative to provide further guidance in a general comment.

3. On the basis of the initial reports of various States parties that it has reviewed so far, the Committee observes that there is a general misunderstanding of the exact scope of the obligations of States parties under article 12 of the Convention. Indeed, there has been a general failure to understand that the human rights-based model of disability implies a shift from the substitute decision-making paradigm to one that is based on supported decision-making. The aim of the present general comment is to explore the general obligations deriving from the various components of article 12.

4. The present general comment reflects an interpretation of article 12 which is premised on the general principles of the Convention, as outlined in article 3, namely, respect for the inherent dignity, individual autonomy — including the freedom to make one's own choices —, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility;

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equality between men and women; and respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

5. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of Persons with Disabilities each specify that the right to equal recognition before the law is operative "everywhere". In other words, there are no permissible circumstances under international human rights law in which a person may be deprived of the right to recognition as a person before the law, or in which this right may be limited. This is reinforced by article 4, paragraph 2, of the International Covenant on Civil and Political Rights, which allows no derogation from this right, even in times of public emergency. Although an equivalent prohibition on derogation from the right to equal recognition before the law is not specified in the Convention on the Rights of Persons with Disabilities, the provision in the International Covenant covers such protection by virtue of article 4, paragraph 4, of the Convention, which establishes that the provisions of the Convention on the Rights of Persons with Disabilities do not derogate from existing international law.

6. The right to equality before the law is also reflected in other core international and regional human rights treaties. Article 15 of the Convention on the Elimination of All Forms of Discrimination against Women guarantees women's equality before the law and requires the recognition of women's legal capacity on an equal basis with men, including with regard to concluding contracts, administering property and exercising their rights in the justice system. Article 3 of the African Charter on Human and Peoples' Rights provides for the right of every person to be equal before the law and to enjoy equal protection of the law. Article 3 of the American Convention on Human Rights enshrines the right to juridical personality and the right of every person to recognition as a person before the law.

7. States parties must holistically examine all areas of law to ensure that the right of persons with disabilities to legal capacity is not restricted on an unequal basis with others. Historically, persons with disabilities have been denied their right to legal capacity in many areas in a discriminatory manner under substitute decision-making regimes such as guardianship, conservatorship and mental health laws that permit forced treatment. These practices must be abolished in order to ensure that full legal capacity is restored to persons with disabilities on an equal basis with others.

8. Article 12 of the Convention affirms that all persons with disabilities have full legal capacity. Legal capacity has been prejudicially denied to many groups throughout history, including women (particularly upon marriage) and ethnic minorities. However, persons with disabilities remain the group whose legal capacity is most commonly denied in legal systems worldwide. The right to equal recognition before the law implies that legal capacity is a universal attribute inherent in all persons by virtue of their humanity and must be upheld for persons with disabilities on an equal basis with others. Legal capacity is indispensable for the exercise of civil, political, economic, social and cultural rights. It acquires a special significance for persons with disabilities when they have to make fundamental decisions regarding their health, education and work. The denial of legal capacity to persons with disabilities has, in many cases, led to their being deprived of many fundamental rights, including the right to vote, the right to marry and found a family, reproductive rights, parental rights, the right to give consent for intimate relationships and medical treatment, and the right to liberty.

9. All persons with disabilities, including those with physical, mental, intellectual or sensory impairments, can be affected by denial of legal capacity and substitute decision-making. However, persons with cognitive or psychosocial disabilities have been, and still are, disproportionately affected by substitute decision-making regimes and denial of legal capacity. The Committee reaffirms that a person's status as a person with a disability or the existence of an impairment (including a physical or sensory impairment) must never be

grounds for denying legal capacity or any of the rights provided for in article 12. All practices that in purpose or effect violate article 12 must be abolished in order to ensure that full legal capacity is restored to persons with disabilities on an equal basis with others.

10. This general comment focuses primarily on the normative content of article 12 and the State obligations that emerge therefrom. The Committee will continue to carry out work in this area so as to provide further in-depth guidance on the rights and obligations deriving from article 12 in future concluding observations, general comments and other documents.

II. Normative content of article 12

Article 12, paragraph 1

11. Article 12, paragraph 1, reaffirms the right of persons with disabilities to be recognized as persons before the law. This guarantees that every human being is respected as a person possessing legal personality, which is a prerequisite for the recognition of a person's legal capacity.

Article 12, paragraph 2

12. Article 12, paragraph 2, recognizes that persons with disabilities enjoy legal capacity on an equal basis with others in all areas of life. Legal capacity includes the capacity to be both a holder of rights and an actor under the law. Legal capacity to be a holder of rights entitles a person to full protection of his or her rights by the legal system. Legal capacity to act under the law recognizes that person as an agent with the power to engage in transactions and create, modify or end legal relationships. The right to recognition as a legal agent is provided for in article 12, paragraph 5, of the Convention, which outlines the duty of States parties to "take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and ... ensure that persons with disabilities are not arbitrarily deprived of their property".

13. Legal capacity and mental capacity are distinct concepts. Legal capacity is the ability to hold rights and duties (legal standing) and to exercise those rights and duties (legal agency). It is the key to accessing meaningful participation in society. Mental capacity refers to the decision-making skills of a person, which naturally vary from one person to another and may be different for a given person depending on many factors, including environmental and social factors. Legal instruments such as the Universal Declaration of Human Rights (art. 6), the International Covenant on Civil and Political Rights (art. 16) and the Convention on the Elimination of All Forms of Discrimination Against Women (art. 15) do not specify the distinction between mental and legal capacity. Article 12 of the Convention on the Rights of Persons with Disabilities, however, makes it clear that "unsoundedness of mind" and other discriminatory labels are not legitimate reasons for the denial of legal capacity (both legal standing and legal agency). Under article 12 of the Convention, perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity.

14. Legal capacity is an inherent right accorded to all people, including persons with disabilities. As noted above, it consists of two strands. The first is legal standing to hold rights and to be recognized as a legal person before the law. This may include, for example, having a birth certificate, seeking medical assistance, registering to be on the electoral role or applying for a passport. The second is legal agency to act on those rights and to have those actions recognized by the law. It is this component that is frequently denied or

diminished for persons with disabilities. For example, laws may allow persons with disabilities to own property, but may not always respect the actions taken by them in terms of buying and selling property. Legal capacity means that all people, including persons with disabilities, have legal standing and legal agency simply by virtue of being human. Therefore, both strands of legal capacity must be recognized for the right to legal capacity to be fulfilled; they cannot be separated. The concept of mental capacity is highly controversial in and of itself. Mental capacity is not, as is commonly presented, an objective, scientific and naturally occurring phenomenon. Mental capacity is contingent on social and political contexts, as are the disciplines, professions and practices which play a dominant role in assessing mental capacity.

15. In most of the State party reports that the Committee has examined so far, the concepts of mental and legal capacity have been conflated so that where a person is considered to have impaired decision-making skills, often because of a cognitive or psychosocial disability, his or her legal capacity to make a particular decision is consequently removed. This is decided simply on the basis of the diagnosis of an impairment (status approach), or where a person makes a decision that is considered to have negative consequences (outcome approach), or where a person's decision-making skills are considered to be deficient (functional approach). The functional approach attempts to assess mental capacity and deny legal capacity accordingly. It is often based on whether a person can understand the nature and consequences of a decision and/or whether he or she can use or weigh the relevant information. This approach is flawed for two key reasons: (a) it is discriminatorily applied to people with disabilities; and (b) it presumes to be able to accurately assess the inner-workings of the human mind and, when the person does not pass the assessment, it then denies him or her a core human right — the right to equal recognition before the law. In all of those approaches, a person's disability and/or decision-making skills are taken as legitimate grounds for denying his or her legal capacity and lowering his or her status as a person before the law. Article 12 does not permit such discriminatory denial of legal capacity, but, rather, requires that support be provided in the exercise of legal capacity.

Article 12, paragraph 3

16. Article 12, paragraph 3, recognizes that States parties have an obligation to provide persons with disabilities with access to support in the exercise of their legal capacity. States parties must refrain from denying persons with disabilities their legal capacity and must, rather, provide persons with disabilities access to the support necessary to enable them to make decisions that have legal effect.

17. Support in the exercise of legal capacity must respect the rights, will and preferences of persons with disabilities and should never amount to substitute decision-making. Article 12, paragraph 3, does not specify what form the support should take. "Support" is a broad term that encompasses both informal and formal support arrangements, of varying types and intensity. For example, persons with disabilities may choose one or more trusted support persons to assist them in exercising their legal capacity for certain types of decisions, or may call on other forms of support, such as peer support, advocacy (including self-advocacy support), or assistance with communication. Support to persons with disabilities in the exercise of their legal capacity might include measures relating to universal design and accessibility — for example, requiring private and public actors, such as banks and financial institutions, to provide information in an understandable format or to provide professional sign language interpretation — in order to enable persons with disabilities to perform the legal acts required to open a bank account, conclude contracts or conduct other social transactions. Support can also constitute the development and recognition of diverse, non-conventional methods of communication, especially for those

who use non-verbal forms of communication to express their will and preferences. For many persons with disabilities, the ability to plan in advance is an important form of support, whereby they can state their will and preferences which should be followed at a time when they may not be in a position to communicate their wishes to others. All persons with disabilities have the right to engage in advance planning and should be given the opportunity to do so on an equal basis with others. States parties can provide various forms of advance planning mechanisms to accommodate various preferences, but all the options should be non-discriminatory. Support should be provided to a person, where desired, to complete an advance planning process. The point at which an advance directive enters into force (and ceases to have effect) should be decided by the person and included in the text of the directive; it should not be based on an assessment that the person lacks mental capacity.

18. The type and intensity of support to be provided will vary significantly from one person to another owing to the diversity of persons with disabilities. This is in accordance with article 3 (d), which sets out "respect for difference and acceptance of persons with disabilities as part of human diversity and humanity" as a general principle of the Convention. At all times, including in crisis situations, the individual autonomy and capacity of persons with disabilities to make decisions must be respected.

19. Some persons with disabilities only seek recognition of their right to legal capacity on an equal basis with others, as provided for in article 12, paragraph 2, of the Convention, and may not wish to exercise their right to support, as provided for in article 12, paragraph 3.

Article 12, paragraph 4

20. Article 12, paragraph 4, outlines the safeguards that must be present in a system of support in the exercise of legal capacity. Article 12, paragraph 4, must be read in conjunction with the rest of article 12 and the whole Convention. It requires States parties to create appropriate and effective safeguards for the exercise of legal capacity. The primary purpose of these safeguards must be to ensure the respect of the person's rights, will and preferences. In order to accomplish this, the safeguards must provide protection from abuse on an equal basis with others.

21. Where, after significant efforts have been made, it is not practicable to determine the will and preferences of an individual, the "best interpretation of will and preferences" must replace the "best interests" determinations. This respects the rights, will and preferences of the individual, in accordance with article 12, paragraph 4. The "best interests" principle is not a safeguard which complies with article 12 in relation to adults. The "will and preferences" paradigm must replace the "best interests" paradigm to ensure that persons with disabilities enjoy the right to legal capacity on an equal basis with others.

22. All people risk being subject to "undue influence", yet this may be exacerbated for those who rely on the support of others to make decisions. Undue influence is characterized as occurring, where the quality of the interaction between the support person and the person being supported includes signs of fear, aggression, threat, deception or manipulation. Safeguards for the exercise of legal capacity must include protection against undue influence; however, the protection must respect the rights, will and preferences of the person, including the right to take risks and make mistakes.

Article 12, paragraph 5

23. Article 12, paragraph 5, requires States parties to take measures, including legislative, administrative, judicial and other practical measures, to ensure the rights of

persons with disabilities with respect to financial and economic affairs, on an equal basis with others. Access to finance and property has traditionally been denied to persons with disabilities based on the medical model of disability. That approach of denying persons with disabilities legal capacity for financial matters must be replaced with support to exercise legal capacity, in accordance with article 12, paragraph 3. In the same way as gender may not be used as the basis for discrimination in the areas of finance and property,[1] neither may disability.

III. Obligations of States parties

24. States parties have an obligation to respect, protect and fulfil the right of all persons with disabilities to equal recognition before the law. In this regard, States parties should refrain from any action that deprives persons with disabilities of the right to equal recognition before the law. States parties should take action to prevent non-State actors and private persons from interfering with the ability of persons with disabilities to realize and enjoy their human rights, including the right to legal capacity. One of the aims of support in the exercise of legal capacity is to build the confidence and skills of persons with disabilities so that they can exercise their legal capacity with less support in the future, if they so wish. States parties have an obligation to provide training for persons receiving support so that they can decide when less support is needed or when they no longer require support in the exercise of their legal capacity.

25. In order to fully recognize "universal legal capacity", whereby all persons, regardless of disability or decision-making skills, inherently possess legal capacity, States parties must abolish denials of legal capacity that are discriminatory on the basis of disability in purpose or effect.[2]

26. In its concluding observations on States parties' initial reports, in relation to article 12, the Committee on the Rights of Persons with Disabilities has repeatedly stated that States parties must "review the laws allowing for guardianship and trusteeship, and take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making, which respects the person's autonomy, will and preferences".

27. Substitute decision-making regimes can take many different forms, including plenary guardianship, judicial interdiction and partial guardianship. However, these regimes have certain common characteristics: they can be defined as systems where (i) legal capacity is removed from a person, even if this is in respect of a single decision; (ii) a substitute decision-maker can be appointed by someone other than the person concerned, and this can be done against his or her will; and (iii) any decision made by a substitute decision-maker is based on what is believed to be in the objective "best interests" of the person concerned, as opposed to being based on the person's own will and preferences.

28. States parties' obligation to replace substitute decision-making regimes by supported decision-making requires both the abolition of substitute decision-making regimes and the development of supported decision-making alternatives. The development of supported decision-making systems in parallel with the maintenance of substitute decision-making regimes is not sufficient to comply with article 12 of the Convention.

29. A supported decision-making regime comprises various support options which give primacy to a person's will and preferences and respect human rights norms. It should provide protection for all rights, including those related to autonomy (right to legal

[1] See the Convention on the Elimination of All Forms of Discrimination against Women, art. 13 (b).

[2] See the Convention on the Rights of Persons with Disabilities, art. 2, in conjunction with art. 5.

capacity, right to equal recognition before the law, right to choose where to live, etc.) and rights related to freedom from abuse and ill-treatment (right to life, right to physical integrity, etc.). Furthermore, systems of supported decision-making should not over-regulate the lives of persons with disabilities. While supported decision-making regimes can take many forms, they should all incorporate certain key provisions to ensure compliance with article 12 of the Convention, including the following:

(a) Supported decision-making must be available to all. A person's level of support needs, especially where these are high, should not be a barrier to obtaining support in decision-making;

(b) All forms of support in the exercise of legal capacity, including more intensive forms of support, must be based on the will and preference of the person, not on what is perceived as being in his or her objective best interests;

(c) A person's mode of communication must not be a barrier to obtaining support in decision-making, even where this communication is non-conventional, or understood by very few people;

(d) Legal recognition of the support person(s) formally chosen by a person must be available and accessible, and States have an obligation to facilitate the creation of support, particularly for people who are isolated and may not have access to naturally occurring support in the community. This must include a mechanism for third parties to verify the identity of a support person as well as a mechanism for third parties to challenge the action of a support person if they believe that the support person is not acting in accordance with the will and preferences of the person concerned;

(e) In order to comply with the requirement, set out in article 12, paragraph 3, of the Convention, for States parties to take measures to "provide access" to the support required, States parties must ensure that support is available at nominal or no cost to persons with disabilities and that lack of financial resources is not a barrier to accessing support in the exercise of legal capacity;

(f) Support in decision-making must not be used as justification for limiting other fundamental rights of persons with disabilities, especially the right to vote, the right to marry, or establish a civil partnership, and found a family, reproductive rights, parental rights, the right to give consent for intimate relationships and medical treatment, and the right to liberty;

(g) The person must have the right to refuse support and terminate or change the support relationship at any time;

(h) Safeguards must be set up for all processes relating to legal capacity and support in exercising legal capacity. The goal of safeguards is to ensure that the person's will and preferences are respected.

(i) The provision of support to exercise legal capacity should not hinge on mental capacity assessments; new, non-discriminatory indicators of support needs are required in the provision of support to exercise legal capacity.

30. The right to equality before the law has long been recognized as a civil and political right, with roots in the International Covenant on Civil and Political Rights. Civil and political rights attach at the moment of ratification and States parties are required to take steps to immediately realize those rights. As such, the rights provided for in article 12 apply at the moment of ratification and are subject to immediate realization. The State obligation, provided for in article 12, paragraph 3, to provide access to support in the exercise of legal capacity is an obligation for the fulfilment of the civil and political right to equal recognition before the law. "Progressive realization" (art. 4, para. 2) does not apply to the

provisions of article 12. Upon ratifying the Convention, States parties must immediately begin taking steps towards the realization of the rights provided for in article 12. Those steps must be deliberate, well-planned and include consultation with and meaningful participation of people with disabilities and their organizations.

IV. Relationship with other provisions of the Convention

31. Recognition of legal capacity is inextricably linked to the enjoyment of many other human rights provided for in the Convention on the Rights of Persons with Disabilities, including, but not limited to, the right to access justice (art. 13); the right to be free from involuntary detention in a mental health facility and not to be forced to undergo mental health treatment (art. 14); the right to respect for one's physical and mental integrity (art. 17); the right to liberty of movement and nationality (art. 18); the right to choose where and with whom to live (art. 19); the right to freedom of expression (art. 21); the right to marry and found a family (art. 23); the right to consent to medical treatment (art. 25); and the right to vote and stand for election (art. 29). Without recognition of the person as a person before the law, the ability to assert, exercise and enforce those rights, and many other rights provided for in the Convention, is significantly compromised.

Article 5: Equality and non-discrimination

32. To achieve equal recognition before the law, legal capacity must not be denied discriminatorily. Article 5 of the Convention guarantees equality for all persons under and before the law and the right to equal protection of the law. It expressly prohibits all discrimination on the basis of disability. Discrimination on the basis of disability is defined in article 2 of the Convention as "any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms". Denial of legal capacity having the purpose or effect of interfering with the right of persons with disabilities to equal recognition before the law is a violation of articles 5 and 12 of the Convention. States have the ability to restrict the legal capacity of a person based on certain circumstances, such as bankruptcy or criminal conviction. However, the right to equal recognition before the law and freedom from discrimination requires that when the State denies legal capacity, it must be on the same basis for all persons. Denial of legal capacity must not be based on a personal trait such as gender, race, or disability, or have the purpose or effect of treating the person differently.

33. Freedom from discrimination in the recognition of legal capacity restores autonomy and respects the human dignity of the person in accordance with the principles enshrined in article 3 (a) of the Convention. Freedom to make one's own choices most often requires legal capacity. Independence and autonomy include the power to have one's decisions legally respected. The need for support and reasonable accommodation in making decisions shall not be used to question a person's legal capacity. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity (art. 3 (d)) is incompatible with granting legal capacity on an assimilationist basis.

34. Non-discrimination includes the right to reasonable accommodation in the exercise of legal capacity (art. 5, para. 3). Reasonable accommodation is defined in article 2 of the Convention as "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms". The right to reasonable accommodation in the exercise of legal capacity is separate from, and complementary to, the right to support in the exercise of legal

capacity. States parties are required to make any necessary modifications or adjustments to allow persons with disabilities to exercise their legal capacity, unless it is a disproportionate or undue burden. Such modifications or adjustments may include, but are not limited to, access to essential buildings such as courts, banks, social benefit offices and voting venues; accessible information regarding decisions which have legal effect; and personal assistance. The right to support in the exercise of legal capacity shall not be limited by the claim of disproportionate or undue burden. The State has an absolute obligation to provide access to support in the exercise of legal capacity.

Article 6: Women with disabilities

35. Article 15 of the Convention on the Elimination of All Forms of Discrimination against Women provides for women's legal capacity on an equal basis with men, thereby acknowledging that recognition of legal capacity is integral to equal recognition before the law: "States parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals" (para. 2). This provision applies to all women, including women with disabilities. The Convention on the Rights of Persons with Disabilities recognizes that women with disabilities may be subject to multiple and intersectional forms of discrimination based on gender and disability. For example, women with disabilities are subjected to high rates of forced sterilization, and are often denied control of their reproductive health and decision-making, the assumption being that they are not capable of consenting to sex. Certain jurisdictions also have higher rates of imposing substitute decision-makers on women than on men. Therefore, it is particularly important to reaffirm that the legal capacity of women with disabilities should be recognized on an equal basis with others.

Article 7: Children with disabilities

36. While article 12 of the Convention protects equality before the law for all persons, regardless of age, article 7 of the Convention recognizes the developing capacities of children and requires that "in all actions concerning children with disabilities, the best interests of the child ... be a primary consideration" (para. 2) and that "their views [be] given due weight in accordance with their age and maturity" (para. 3). To comply with article 12, States parties must examine their laws to ensure that the will and preferences of children with disabilities are respected on an equal basis with other children.

Article 9: Accessibility

37. The rights provided for in article 12 are closely tied to State obligations relating to accessibility (art. 9) because the right to equal recognition before the law is necessary to enable persons with disabilities to live independently and participate fully in all aspects of life. Article 9 requires the identification and elimination of barriers to facilities or services open or provided to the public. Lack of accessibility to information and communication and inaccessible services may constitute barriers to the realization of legal capacity for some persons with disabilities, in practice. Therefore, States parties must make all procedures for the exercise of legal capacity, and all information and communication pertaining to it, fully accessible. States parties must review their laws and practices to ensure that the right to legal capacity and accessibility are being realized.

Article 13: Access to justice

38. States parties have an obligation to ensure that persons with disabilities have access to justice on an equal basis with others. The recognition of the right to legal capacity is essential for access to justice in many respects. In order to seek enforcement of their rights and obligations on an equal basis with others, persons with disabilities must be recognized as persons before the law with equal standing in courts and tribunals. States parties must also ensure that persons with disabilities have access to legal representation on an equal basis with others. This has been identified as a problem in many jurisdictions and must be remedied, including by ensuring that persons who experience interference with their right to legal capacity have the opportunity to challenge such interference — on their own behalf or with legal representation — and to defend their rights in court. Persons with disabilities have often been excluded from key roles in the justice system as lawyers, judges, witnesses or members of a jury.

39. Police officers, social workers and other first responders must be trained to recognize persons with disabilities as full persons before the law and to give the same weight to complaints and statements from persons with disabilities as they would to non-disabled persons. This entails training and awareness-raising in these important professions. Persons with disabilities must also be granted legal capacity to testify on an equal basis with others. Article 12 of the Convention guarantees support in the exercise of legal capacity, including the capacity to testify in judicial, administrative and other legal proceedings. Such support could take various forms, including recognition of diverse communication methods, allowing video testimony in certain situations, procedural accommodation, the provision of professional sign language interpretation and other assistive methods. The judiciary must also be trained and made aware of their obligation to respect the legal capacity of persons with disabilities, including legal agency and standing.

Articles 14 and 25: Liberty, security and consent

40. Respecting the right to legal capacity of persons with disabilities on an equal basis with others includes respecting the right of persons with disabilities to liberty and security of the person. The denial of the legal capacity of persons with disabilities and their detention in institutions against their will, either without their consent or with the consent of a substitute decision-maker, is an ongoing problem. This practice constitutes arbitrary deprivation of liberty and violates articles 12 and 14 of the Convention. States parties must refrain from such practices and establish a mechanism to review cases whereby persons with disabilities have been placed in a residential setting without their specific consent.

41. The right to enjoyment of the highest attainable standard of health (art. 25) includes the right to health care on the basis of free and informed consent. States parties have an obligation to require all health and medical professionals (including psychiatric professionals) to obtain the free and informed consent of persons with disabilities prior to any treatment. In conjunction with the right to legal capacity on an equal basis with others, States parties have an obligation not to permit substitute decision-makers to provide consent on behalf of persons with disabilities. All health and medical personnel should ensure appropriate consultation that directly engages the person with disabilities. They should also ensure, to the best of their ability, that assistants or support persons do not substitute or have undue influence over the decisions of persons with disabilities.

Articles 15, 16 and 17: Respect for personal integrity and freedom from torture, violence, exploitation and abuse

42. As has been stated by the Committee in several concluding observations, forced treatment by psychiatric and other health and medical professionals is a violation of the right to equal recognition before the law and an infringement of the rights to personal integrity (art. 17); freedom from torture (art. 15); and freedom from violence, exploitation and abuse (art. 16). This practice denies the legal capacity of a person to choose medical treatment and is therefore a violation of article 12 of the Convention. States parties must, instead, respect the legal capacity of persons with disabilities to make decisions at all times, including in crisis situations; must ensure that accurate and accessible information is provided about service options and that non-medical approaches are made available; and must provide access to independent support. States parties have an obligation to provide access to support for decisions regarding psychiatric and other medical treatment. Forced treatment is a particular problem for persons with psychosocial, intellectual and other cognitive disabilities. States parties must abolish policies and legislative provisions that allow or perpetrate forced treatment, as it is an ongoing violation found in mental health laws across the globe, despite empirical evidence indicating its lack of effectiveness and the views of people using mental health systems who have experienced deep pain and trauma as a result of forced treatment. The Committee recommends that States parties ensure that decisions relating to a person's physical or mental integrity can only be taken with the free and informed consent of the person concerned.

Article 18: Nationality

43. Persons with disabilities have the right to a name and registration of their birth as part of the right to recognition everywhere as a person before the law (art. 18, para. 2). States parties must take the necessary measures to ensure that children with disabilities are registered at birth. This right is provided for in the Convention on the Rights of the Child (art. 7); however, children with disabilities are disproportionately likely not to be registered as compared with other children. This not only denies them citizenship, but often also denies them access to health care and education, and can even lead to their death. Since there is no official record of their existence, their death may occur with relative impunity.

Article 19: Living independently and being included in the community

44. To fully realize the rights provided for in article 12, it is imperative that persons with disabilities have opportunities to develop and express their will and preferences, in order to exercise their legal capacity on an equal basis with others. This means that persons with disabilities must have the opportunity to live independently in the community and to make choices and to have control over their everyday lives, on an equal basis with others, as provided for in article 19.

45. Interpreting article 12, paragraph 3, in the light of the right to live in the community (art. 19) means that support in the exercise of legal capacity should be provided through a community-based approach. States parties must recognize that communities are assets and partners in the process of learning what types of support are needed in the exercise of legal capacity, including raising awareness about different support options. States parties must recognize the social networks and naturally occurring community support (including friends, family and schools) of persons with disabilities as key to supported decision-making. This is consistent with the Convention's emphasis on the full inclusion and participation of persons with disabilities in the community.

46. The segregation of persons with disabilities in institutions continues to be a pervasive and insidious problem that violates a number of the rights guaranteed under the Convention. The problem is exacerbated by the widespread denial of legal capacity to persons with disabilities, which allows others to consent to their placement in institutional settings. The directors of institutions are also commonly vested with the legal capacity of the persons residing therein. This places all power and control over the person in the hands of the institution. In order to comply with the Convention and respect the human rights of persons with disabilities, deinstitutionalization must be achieved and legal capacity must be restored to all persons with disabilities, who must be able to choose where and with whom to live (art. 19). A person's choice of where and with whom to live should not affect his or her right to access support in the exercise of his or her legal capacity.

Article 22: Privacy

47. Substitute decision-making regimes, in addition to being incompatible with article 12 of the Convention, also potentially violate the right to privacy of persons with disabilities, as substitute decision-makers usually gain access to a wide range of personal and other information regarding the person. In establishing supported decision-making systems, States parties must ensure that those providing support in the exercise of legal capacity fully respect the right to privacy of persons with disabilities.

Article 29: Political participation

48. Denial or restriction of legal capacity has been used to deny political participation, especially the right to vote, to certain persons with disabilities. In order to fully realize the equal recognition of legal capacity in all aspects of life, it is important to recognize the legal capacity of persons with disabilities in public and political life (art. 29). This means that a person's decision-making ability cannot be a justification for any exclusion of persons with disabilities from exercising their political rights, including the right to vote, the right to stand for election and the right to serve as a member of a jury.

49. States parties have an obligation to protect and promote the right of persons with disabilities to access the support of their choice in voting by secret ballot, and to participate in all elections and referendums without discrimination. The Committee further recommends that States parties guarantee the right of persons with disabilities to stand for election, to hold office effectively and to perform all public functions at all levels of government, with reasonable accommodation and support, where desired, in the exercise of their legal capacity.

V. Implementation at the national level

50. In the light of the normative content and obligations outlined above, States parties should take the following steps to ensure the full implementation of article 12 of the Convention on the Rights of Persons with Disabilities:

(a) Recognize persons with disabilities as persons before the law, having legal personality and legal capacity in all aspects of life, on an equal basis with others. This requires the abolition of substitute decision-making regimes and mechanisms that deny legal capacity and which discriminate in purpose or effect against persons with disabilities. It is recommended that States parties create statutory language protecting the right to legal capacity on an equal basis for all;

(b) Establish, recognize and provide persons with disabilities with access to a broad range of support in the exercise of their legal capacity. Safeguards for such support must be premised on respect for the rights, will and preferences of persons with disabilities. The support should meet the criteria set out in paragraph 29 above on the obligations of States parties to comply with article 12, paragraph 3, of the Convention;

(c) Closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations, in the development and implementation of legislation, policies and other decision-making processes that give effect to article 12.

51. The Committee encourages States parties to undertake or devote resources to the research and development of best practices respecting the right to equal recognition of the legal capacity of persons with disabilities and support in the exercise of legal capacity.

52. States parties are encouraged to develop effective mechanisms to combat both formal and informal substitute decision-making. To this end, the Committee urges States parties to ensure that persons with disabilities have the opportunity to make meaningful choices in their lives and develop their personalities, to support the exercise of their legal capacity. This includes, but is not limited to, opportunities to build social networks; opportunities to work and earn a living on an equal basis with others; multiple choices for place of residence in the community; and inclusion in education at all levels.